IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

OP.No. 1564 of 1998(J)

PETITIONER:

M/S.EVERSHINE MARBLE INDUSTRIES,
AINGOTH, P.O.PADNEKAD, VIA.NILESHWAR,
KASARAGOD DIST., REP. BY ITS
MANAGING PARTNER, P.J.THRESIAMMA.

BY ADV. SRI.PAULY MATHEW MURICKEN

RESPONDENTS:

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1. STATE OF KERALA REP. BY
SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT,
KERALA GOVT. SECRETARIAT,
TRIVANDRUM.

2. GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE,
KASARAGOD.

3. SALES TAX OFFICER,
HOSDURG, KASARAGOD DIST.

4. DIRECTOR OF INDUSTRIES & COMMERCE,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.2847/1998 IN OP NO.1564/1998

DISMISSED:

13.12.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: COPY OF THE CERTIFICATE OF PROVISIONAL REGISTRATION FROM R2 DT.3.8.89.

P2: COPY OF CERTIFICATE OF REGISTRATION ISSUED BY R3 DT.8.3.90.

P3: COPY OF ORDER OF EXEMPTION ISSUED BY R2 DT.18.9.92.

P4: COPY OF JUDGMENT OF THIS HON'BLE COURT IN OP 855/95-B DT.18.1.95.

P5: COPY OF REPRESENTATION TO R4 DT.23.5.95.

P6: COPY OF ORDER/LETTER FROM R4 DT.8.4.96.

P7: COPY OF ORDER OF EXEMPTION TO M/S.KOHINOOR MARBLE INDUSTRIES DT.1.4.89.

P8: COPY OF ORDER OF ASSESSMENT FOR 1991-92 BY R3 DT.25.7.97.

P9: .DO. 1992-93 .DO.

P10: .DO. 1993-94 .DO.

P11: COPY OF THE NOTICE DEMANDING PENAL INTEREST FOR 1991-92 BY R3.

P12: .DO. 1992-93 .DO.

P13: .DO. 1993-94 .DO.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.1564 of 1998

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Dated this the 13th day of December, 2007.

JUDGMENT

The petitioner is challenging order denying sales tax exemption on sale of polished marble slabs. Even though counsel for the petitioner submitted that petitioner's case for sales tax exemption should have been considered under SRO 968/1980 which did not have a negative list, Government Pleader pointed out that petitioner started commercial production only on 9.7.1990 and application for sales tax exemption was made only on 8.7.1991 and so much so, his application was rightly considered and rejected based on SRO 499/90. I am unable to accept petitioner's contention because SRO 968/80 was superceded by SRO 499/90 which among other things defined "manufacture" to qualify an SSI Unit for exemption. Polishing of an article was brought in the negative list under this notification and therefore, polishing and laying of marble tile or slab by the petitioner does not entitle the petitioner for sales tax exemption on the turnover of the said goods. It is seen that petitioner is granted exemption for manufacture and sale of mosaic tiles. In the circumstances, no interference is called for with the partial disallowance of exemption on

marble tiles. The O.P. fails and is dismissed. However, since stay was granted and Government waived penal interest under amnesty scheme in 2004, petitioner is granted waiver of 40% penal interest on condition that petitioner will remit balance arrears of tax with 60% interest payable under Section 23(3) of the KGST Act on or before 28.2.2008. However, if payment is not made, waiver of 40% of penal interest granted herein will stand automatically vacated and respondents will proceed for recovery of arrears with full interest. The petitioner is free to file appeal on quantum of assessment but without claiming any sales tax exemption on grounds raised and found against the petitioner herein. Further, if petitioner wants to challenge the assessment on any other grounds, the same shall be done after clearing the arrears of tax under protest as above or otherwise petitioner will not be entitled to waiver of interest granted above.

C.N.RAMACHANDRAN NAIR
Judge

pms